

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION**

JERRY WAYNE SHINN
ADC #167169

PLAINTIFF

V. No. 2:20-CV-216-JTR

JESSIE POWELL, Correctional Officer,
Crittenden County Detention Facility;
and TONY HULSEY, Internal Affairs,
Crittenden County Detention Facility

DEFENDANTS

ORDER

Plaintiff Jerry Wayne Shinn, (“Shinn”) initiated this action while he was a prisoner at the Crittenden County Detention Facility (“CCDF”). His *pro se* § 1983 Complaint alleges that on October 9, 2020, Correctional Officer Jessie Powell (“Powell”) “grabbed [Shinn] around [his] neck,” and has continued to “antagonize” him; and (2) on October 14, 2020, Internal Affairs Toni Hulsey (“Hulsey”) threatened to kill Shinn if he kept having people call about the matter. He has sued Powell and Hulsey in their individual and official capacities, and he seeks monetary damages. *Docs. 2.*

Powell and Hulsey have filed Motions for Summary Judgment, Statements of Undisputed Facts, and Briefs in Support arguing that all of Shinn’s claims against them should be dismissed with prejudice. *Docs. 28, 29, 30, 31, 32, & 33.* Shinn did not file a Response.

For the following reasons, this case is DISMISSED, WITHOUT PREJUDICE, under Local Rule 5.5(c)(2) and Fed. R. Civ. P. 41(b). Defendants' Motions for Summary Judgment (*Docs. 28 & 31*) are DENIED, AS MOOT.

I. Discussion

The Federal Rules of Civil Procedure and Local Rules require a *pro se* plaintiff, like Shinn, to prosecute their action diligently and respond to Court Orders or face dismissal. See Fed. R. Civ. P. 41(b) and Local Rule 5.5(c)(2).¹

The Court gave Shinn an opportunity to respond to the Motions for Summary Judgment and Statements of Undisputed Facts. *Doc. 34*. The Court noted, under Local Rule 56.1, Shinn must respond to Defendants' Statements of Undisputed Facts if he disagreed with any factual statement. *Doc. 34 at 1-2*. Importantly, the Court warned Shinn that:

[F]ailure to timely and properly file a Response and Statement of Disputed Facts will result in: (a) all of the facts in the applicable Defendants' Statement of Undisputed Facts being deemed undisputed by Plaintiff;

¹Local Rule 5.5(c)(2) states: "It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure."

and (b) the possible dismissal of this action, without prejudice, pursuant to Local Rule 5.5(c)(2).

Doc. 34 at 2-3.

Shinn has not filed his Response, and the time for doing so has expired. When a plaintiff fails to respond to a Court Order or Motion for Summary Judgment, dismissal without prejudice, under Local Rule 5.5(c)(2) and Fed. R. Civ. P. 41(b), is appropriate. See *Sieber v. Benton*, No. 1:14-CV-00055-KGB-JTR, 2016 WL 4766498 (E.D. Ark. Apr. 19, 2016)(dismissal under Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2) appropriate when Plaintiff failed to file a Response to a Motion for Summary Judgment or Court Order); *Gardner v. Tefft*, No. 4:16-CV-4102, 2017 WL 5606769 (W.D. Ark. Nov. 21, 2017)(same); *Irving v. Fain*, No. 6:17-CV-06096, 2018 WL 4431345 (W.D. Ark. Sept. 17, 2018)(same); *Allen v. Dallas Cty., Arkansas*, No. 5:18-CV-00124-DPM-JJV, 2018 WL 4609978 (E.D. Ark. Sept. 5, 2018)(same).

II. Conclusion

IT IS THEREFORE ORDERED THAT:

1. This case is DISMISSED, WITHOUT PREJUDICE, under Local Rule 5.5(c)(2) and Federal Rule of Civil Procedure 41(b).
2. Defendants' Motions for Summary Judgment (*Docs. 28 & 31*) are DENIED, AS MOOT.

3. It is certified that an *in forma pauperis* appeal from would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3).

DATED this 14th day of March, 2022.

A handwritten signature in black ink, appearing to read "J. Thomas Ray", is written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE